

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

STEPHEN SALINAS,

Plaintiff and Appellant,

v.

PAOLO MARTIN,

Defendant and Respondent.

A119733

(Super. Ct. No. MSC 06-01023)

**ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]**

**THE COURT:**

It is ordered that the opinion filed herein on August 28, 2008, be modified in the following particulars:

1. On page 4, first full paragraph, lines 9–12, the sentence and supporting citations beginning with the words “To be entitled” are deleted and replaced with:

To obtain a summary judgment a defendant may conclusively negate an essential element of plaintiff’s action, but is not required to do so. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 [107 Cal.Rptr.2d 841, 24 P.3d 493]; *Castillo v. Barrera* (2007) 146 Cal.App.4th 1317, 1323 [53 Cal.Rptr.3d 494].) “Summary judgment in favor of the defendant will be upheld when the evidentiary submissions conclusively negate a necessary element of the plaintiff’s cause of action or show that under no hypothesis is there a material issue of fact requiring the process of a trial.” (*Biscotti v. Yuba City Unified School Dist.* (2007) 158 Cal.App.4th 554, 557–558 [69 Cal.Rptr.3d 825].)

There is no change in the judgment.

The petition for rehearing is denied.

Dated: September 22, 2008

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Swager, Acting P. J.

Trial Court

Contra Costa County Superior Court

Trial Judge

Honorable Judith S. Craddick

For Plaintiff and Appellant

Robert Stevens Condie, Esq.

For Defendant and Respondent

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*Salinas v. Martin, A119733*